

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ALEJANDRO RELLOTA Y TADEO, APPELLANT.

G.R. No. 168103 [Formerly G.R. Nos. 155930-32]. August 03, 2010

Ponente: PERALTA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-168103/>

PERALTA, J.:

Youth and immaturity are generally badges of truth.[1]

For this Court's consideration is an appeal from the Decision[2] dated April 14, 2005 of the Court of Appeals (CA) in CA-G.R. C.R.-H.C. No. 00117, affirming, with modification, the Decision[3] dated August 8, 2002 of the Regional Trial Court (RTC) of Antipolo City, Branch 73, in Criminal Case Nos. 94-10812, 94-10813 and 94-10814, and finding appellant Alejandro T. Rellota, guilty beyond reasonable doubt of two (2) counts of consummated rape and one (1) count of attempted rape.

The antecedent facts are the following:

AAA,[4] the offended party, was born on July 16, 1981 in XXX, Eastern Samar and was a little over twelve (12) years old when the incidents allegedly happened.

Together with her siblings, BBB and CCC, AAA lived with her aunt, DDD, and the latter's second husband, appellant, in Antipolo City, Rizal from September 1992 to January 1994. Also living with them were two (2) of AAA's cousins. During that period, DDD and appellant were sending AAA, BBB and CCC to school. At the time the incidents took place, DDD was working overseas.

Based on the testimony of AAA, appellant had been kissing her and touching her private parts since September 1993. She claimed that appellant raped her several times between September 1993 and January 1994. She narrated that appellant would usually rape her at night when the other members of the family were either out of the house or asleep. AAA stated that she resisted the advances of appellant, but was not successful. Appellant, according to her, would usually place a bolo beside him whenever he would rape her. She added that appellant would threaten AAA by telling her that he would kill her brother and sister and that he would stop sending her to school.

Around noon of December 20, 1993, AAA took a bath at an artesian well near their house and after bathing, she wrapped her body with a towel before going inside their house. Appellant followed her to the bedroom, pulled down her towel and laid her on the bed. He tied her hands with a rope before forcibly inserting his penis inside her vagina. AAA fought back by kicking and scratching appellant, but the latter was not deterred. Thereafter, appellant untied the hands of AAA and left the room. A few moments later, appellant returned in the bedroom and raped her again.

On January 31, 1994, the same incident happened. AAA went inside their room after taking a bath, not knowing that appellant was inside. Upon seeing her, appellant snatched the towel around her body and laid her down on the sofa. He kissed her and touched her private part, while AAA kicked him and scratched his arms. She was able to push him. After which, appellant ran out the door.

AAA, after that incident, told her older sister about the repeated deeds of the appellant. Afterwards, her sister accompanied AAA to the police station. On February 3, 1994, three (3) separate complaints for rape were filed against appellant with the trial court and was raffled in different branches.[5]

The Complaints read as follows:

Criminal Case No. 94-10812

That on or about and sometime during the month of December, 1993 in the Municipality of Antipolo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, did then and there willfully, unlawfully and feloniously by means of force and intimidation, have sexual intercourse with the undersigned complainant AAA, a minor 12 years of age, against the latter's will and consent.

CONTRARY TO LAW.[6]

Criminal Case No. 94-10813

That on or about the month of September, 1993 in the Municipality of Antipolo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, did then and there willfully, unlawfully and feloniously by means of force and intimidation, have sexual intercourse with the undersigned complainant AAA, a minor twelve years of age, against the latter's will and consent.

CONTRARY TO LAW.[7]

Criminal Case No. 94-10814

That on or about the 31[st] day of January, 1994 in the Municipality of Antipolo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, did then and there willfully, unlawfully and feloniously by means of force and intimidation, have sexual intercourse with the undersigned complainant AAA, a minor 12 years of age, against the latter's will and consent.

CONTRARY TO LAW.[8]

Appellant, with the assistance of counsel de oficio, pleaded not guilty during arraignment.

Complainant AAA filed a Motion for the Consolidation[9] of the three complaints, which was eventually granted.[10]

Thereafter, trial ensued.

The prosecutor presented the testimonies of AAA and Dr. Rosaline Onggao, a medico-legal officer.

On the other hand, the defense presented the testimony of appellant who denied the charges against him. According to him, he could not think of any reason why the complainant filed the complaints. He also claimed that his sister-in-law, who helped the complainant file the charges was mad at him for not giving her a loan.

The trial court, in a Decision[11] dated August 8, 2002, found appellant guilty beyond reasonable doubt of three (3) counts of rape as alleged in the complaints, the dispositive portion of which reads:

WHEREFORE, premises considered, accused ALEJANDRO RELLOTA y TADEO is hereby found guilty beyond reasonable doubt and is hereby sentenced to suffer the penalty of Reclusion Perpetua for each count in Criminal Case Nos. 94-10812, 10813 and 10814.

The accused is further ordered to indemnify [AAA] in the amount of P50,000.00 for each of the three (3)

Criminal Cases, or a total of P150,000.00.

SO ORDERED.[12]

In not imposing the penalty of death, the trial court reasoned out that AAA was already over 12 years old at the time the incidents happened and that although she was below 18 years old, the relationship of AAA and the appellant had not been sufficiently established as the marriage between AAA's aunt and the appellant was not supported by any documentary evidence.

A Notice of Appeal was filed and this Court accepted[13] the appeal on July 16, 2003. However, in a Resolution[14] dated September 6, 2004, this Court transferred the case to the CA in conformity with People of the Philippines v. Efren Mateo y Garcia,[15] modifying the pertinent provisions of the Revised Rules on Criminal Procedure, more particularly Sections 3 and 10 of Rule 122, Section 13 of Rule 124, Section 3 of Rule 125 and any other rule insofar as they provide for direct appeals from the Regional Trial Courts to this Court in cases where the penalty imposed is death, reclusion perpetua or life imprisonment, as well as the Resolution of this Court en banc, dated September 19, 1995, in Internal Rules of the Supreme Court in cases similarly involving the death penalty, pursuant to the Court's power to promulgate rules of procedure in all courts under Article VIII, Section 5 of the Constitution, and allowing an intermediate review by the Court of Appeals before such cases are elevated to this Court.

In a Decision[16] dated April 14, 2005, the CA affirmed, with modification, the Decision of the trial court, disposing it as follows:

WHEREFORE, the Decision appealed from is hereby AFFIRMED in so far as appellant is found GUILTY of two (2) counts of consummated rape and sentenced to reclusion perpetua for each count in Criminal Case Nos. 94-10812 and 94-10813. The Decision is however MODIFIED as follows:

- In Criminal Case No. 94-10814, appellant is found GUILTY beyond reasonable doubt of the crime of attempted rape and is sentenced to an indeterminate penalty of SIX (6) years of prision correccional, as minimum, to TEN (10) YEARS of prision mayor, as maximum. He is also ordered to pay AAA the amounts of P30,000.00 as civil indemnity and P15,000.00 as moral damages.

- In Criminal Case Nos. 94-10812 and 94-10813, appellant is ordered to pay AAA the amount of P50,000.00 as moral damages for each count in addition to the amount of P50,000.00 already imposed as civil indemnity for each count.

SO ORDERED.

Hence, the present appeal.

In his Brief[17] dated October 24, 2003, appellant assigned this lone error:

THE TRIAL COURT GRAVELY ERRED IN NOT ACQUITTING HEREIN [APPELLANT] DESPITE THE FACT THAT AAA'S TESTIMONY WAS INCONSISTENT AND FULL OF FALSEHOODS.

Appellant claims that it was impossible for him to have raped AAA in September 1993 because his wife only left for Jeddah on October 21, 1993. He points out that AAA herself testified that he only kissed her, touched her breast and private parts, but failed to mention that he inserted his penis to her vagina. He also denied raping AAA on January 31, 1994 and December 20, 1993. He further claims that the filing of the criminal charges were instigated by AAA's aunt for his refusal to lend her money. In short, appellant assails the credibility of AAA's testimony as shown by its inconsistencies and falsehoods.

On the other hand, the Office of the Solicitor General (OSG), in its Brief[18] dated November 27, 2003, averred

that the prosecution was able to satisfactorily prove that appellant raped the offended party in September and December 1993. It further stated that appellant used his moral ascendancy over the victim in having carnal knowledge of her against her will. The OSG also argued that the medical report bolsters the victim's claim that she was repeatedly raped by appellant and that the latter's defense of denial is weak and deserves scant consideration.

In agreement with the CA Decision, the OSG posited that there is inadequate proof that the offended party was actually raped on January 31, 1994 and that the penalties imposed by the trial court should be adjusted in accordance with the crimes proved.

After a careful study of the arguments presented by both parties, this Court finds the appeal bereft of any merit.

A rape charge is a serious matter with pernicious consequences both for the appellant and the complainant; hence, utmost care must be taken in the review of a decision involving conviction of rape.[19] Thus, in the disposition and review of rape cases, the Court is guided by these principles: first, the prosecution has to show the guilt of the accused by proof beyond reasonable doubt or that degree of proof that, to an unprejudiced mind, produces conviction; second, the evidence for the prosecution must stand or fall on its own merits and cannot draw strength from the weakness of the evidence of the defense; third, unless there are special reasons, the findings of trial courts, especially regarding the credibility of witnesses, are entitled to great respect and will not be disturbed on appeal; fourth, an accusation of rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; and, fifth, in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution.[20]

Appellant insists that the trial court erred in giving credence to the testimony of AAA. He claims that he could not have possibly raped AAA in September 1993 because, first, his wife was still in the Philippines and left for Jeddah, Saudi Arabia only on October 21, 1993; and second, based on the testimony of AAA, appellant merely kissed and touched her breasts and private parts, but never did she mention that he inserted his penis into her vagina.

The contentions are devoid of merit.

The claim of appellant that he could not have raped AAA because his wife was still in the country during the alleged period when the rape was committed is so flimsy that it does not deserve even the slightest consideration from this Court. It has been oft said that lust is no respecter of time or place. Neither the crampedness of the room, nor the presence of other people therein, nor the high risk of being caught, has been held sufficient and effective obstacle to deter the commission of rape.[21] There have been too many instances when rape was committed under circumstances as indiscreet and audacious as a room full of family members sleeping side by side.[22] There is no rule that a woman can only be raped in seclusion.[23]

As to the contention of appellant that the testimony of AAA was barren of any statement that the former's penis was inserted in the latter's vagina is not quite accurate. AAA categorically stated during her testimony that she was raped, thus:

Q:

On December 20, 1993, at around 12:00 o'clock noon, do you remember where were you?

A:

I was at the artisan well.

Q:

Where is that artisan well located?

A:

Near the house of Alejandro Rellota.

Q:

What were you doing in the vicinity of the arisan well?

A:

I was taking a bath.

Q:

What time did you start taking a bath?

A:

I started taking a bath about 12:00 o'clock and I finished at around 1:00 o'clock.

Q:

After taking a bath, what did you do next?

A:

I went inside the house.

Q:

When you went inside the house, what happened next?

A:

I covered my body with a towel and Alejandro Rellota pulled it.

Q:

Where was Alejandro Rellota at that time?

A:

He went inside the room.

Q:

Before he went inside the house, where was Alejandro Rellota, if you know?

A:

He came from the other room.

Q:

You said once inside the house, Alejandro Rellota pulled your towel, what happened after that?

A:

He raped me.

Q:

When you said that Alejandro Rellota raped you, what did Alejandro Rellota do exactly to you?

A:

He laid me on the bed and he tied my hands.

Q:

After he tied your hands, what did he do next?

A:

He forced me and inserted his penis inside my vagina.

Q:

After he placed his penis inside your vagina, what did he do next?

A:

He left.

Q:

You said he placed his penis inside your vagina, will you tell how long was his penis inside your vagina?

A:

One minute.

Q:

When he placed his penis inside your vagina for around one minute, what, if any, did you feel when he inserted his penis?

A:

I felt painful. (sic)

Q:

You said Alejandro Rellota pulled your towel, when he did that, what did you do?

A:

I resisted.

Q:

What exactly did you do when you resisted?

A:

I tried to avoid him.

Q:

When you said your hands were tied while the accused Alejandro Rellota was doing this, what were you doing?

A:

I pinched his hands and tried to take the rope off my hands.

Q:

Were you successful in taking the rope?

A:

No.

Q:

At the time Alejandro Rellota was doing this while he was tying your hands, what was he wearing at that time?

A:

Short pants and t-shirt.

Q:

You said Alejandro Rellota placed his penis inside your vagina while you were lying down and tied your hands. When Alejandro Rellota placed his penis inside your vagina, what did he do to his clothes?

A:

He took it off.[24]

x x x x

Q:

You said when being asked by the Honorable Court that you were wearing t-shirt and short, you also mentioned that at the time you entered the house after having taken a bath that you were only wearing a towel. Can you explain when for the first time did you wear that t-shirt and shorts in December?

A:

Because when he pulled the towel, he pulled me to the bed, he embraced me and he left and then I immediately wear (sic) my panty and t-shirt then he returned for the second time.

Q:

When he returned, what did he do?

A:

He repeated his acts.

COURT:

You mean to say you were raped twice in December 1993?

A:

Yes, Your Honor.

PUBLIC PROSECUTOR: After he did that again, what happened afterwards?

A:

The incident happened inside his room and after the incident, he ordered me to go out of his room and I went to my bed and sleep. (sic)[25]

x x x x

Q:

Can you please tell the Honorable Court on December 20, how many times did he rape you?

A:

Twice.

Q:

First time when after he pulled your towel?

A:

Yes.

Q:

When he pulled off your towel, you were not wearing anything?

A:

Yes, my body was wrapped with towel only.

Q:

The second time he raped you, you were wearing some clothes?

A:

Yes.[26]

This Court is also not swayed by the claim of appellant that the testimony of AAA is full of inconsistencies and falsehoods. As accurately propounded by the CA:

Appellant further contends that the testimony of AAA regarding the rape that took place on December 20, 1993 is full of lies and falsehood. He points out as lie and inconsistent AAA's statement that he removed her shorts and panty when she was raped on December 20, 1993. He argues that this could not have been possible because, as earlier testified to by AAA, she merely wrapped her body with a towel having just taken a bath. He also points out as lie and inconsistent AAA's statement that after he pulled her to the bed, raped her and then left, she immediately put on her panty and t-shirt. He argues that such putting on her panty and t-shirt could not have been also possible because, as testified to by her, her hands were tied with a rope.

Again, the contentions are without merit.

In her testimony, AAA narrated that she was raped twice on December 20, 1993: the first time was when she came from her bath, wrapped only with a towel and appellant pulled her to the bed, tied her hands and ravished her, and the second time was when she had already dressed up and appellant returned to the room to rape her

again. When AAA testified that appellant removed her shorts and panty before raping her, she was referring to the second time she was raped on that day. Hence, her statements were not inconsistent. There was a lapse of time between the first and the second rape. Likewise, when AAA testified that she put on her t-shirt and panty, she was referring to the first time of the rape where, after ravishing her, appellant untied her hands and left only to return to rape her once more. There was enough time for AAA to dress up.[27]

Nevertheless, the said inconsistencies pointed out by appellant are minor ones which do not affect the credibility of AAA nor erase the fact that the latter was raped. The inconsistencies are trivial and forgivable, since a victim of rape cannot possibly give an exacting detail for each of the previous incidents, since these may just be but mere fragments of a prolonged and continuing nightmare, a calvary she might even be struggling to forget.[28] As this Court pronounced in *People v. Delos Reyes*:[29]

It is established jurisprudence that testimony must be considered and calibrated in its entirety inclusive and not by truncated or isolated passages thereof. Due consideration must be accorded to all the questions propounded to the witness and her answers thereto. The whole impression or effect of what had been said or done must be considered and not individual words or phrases alone. Moreover, rape is a painful experience which is oftentimes not remembered in detail. It causes deep psychological wounds, often forcing the victim's conscience or subconscious to forget the traumatic experience, and casts a stigma upon the victim, scarring her psyche for life. A rape victim cannot thus be expected to keep an accurate account and remember every ugly detail of the appalling and horrifying outrage perpetrated on her especially since she might in fact have been trying not to remember them. Rape victims do not cherish in their memories an accurate account of when and how, and the number of times they were violated. Error-free testimony cannot be expected most especially when a young victim of rape is recounting details of a harrowing experience, one which even an adult would like to bury in oblivion deep in the recesses of her mind, never to be resurrected. Moreover, a rape victim testifying in the presence of strangers, face to face with her tormentor and being cross-examined by his hostile and intimidating lawyer would be benumbed with tension and nervousness and this can affect the accuracy of her testimony. Often, the answers to long-winded and at times misleading questions propounded to her are not responsive. However, considering her youth and her traumatic experience, ample margin of error and understanding should be accorded to a young victim of a vicious crime like rape.[30]

Anent the other instances that appellant was able to force himself and had carnal knowledge of AAA, the latter testified as follows:

FISCAL CLUTARIO:

Miss witness, you stated during your last testimony on September 22, 1994 that you were raped in December 1993 by the accused. Before December 1993, what if anything did the accused do to you?

A:

Yes.

Q:

What did the accused do to you?

A:

Since September 1993, the accused has been kissing me and touching my private parts.

Q:

How many times did the accused do that?

A:

Several times.

Q:

Aside from kissing you and touching your private parts in September 1993, what else did he do to you?

A:

Yes.

Q:

What is that?

A:

He raped me.[31]

x x x x

Q:

In September 1993, did the accused placed (sic) his penis inside your vagina?

A:

Yes, September 1993.

COURT:

How many times?

A:

Several times in September.

COURT:

In how many occasions did it happen?

A:

Once almost everyday.[32]

AAA's further testimony during cross-examination and re-direct examination shows the consistency of her allegation that she was forced against her will and was intimidated by the appellant when the latter satisfied his lust. Thus, as testified:

Cross-
examination:

Q:

When you were allegedly raped, did you not fight back or shout when these abuses were being committed?

A:

I fought back but I did not shout.

Q:

And your cousin, brother and sister were not awakened at the time you were allegedly raped?

A:

No, sir.

Q:

But you could arouse (sic) them or call them for help.

A:

I was afraid during that time.

Q:

Were you being threatened by the accused when these rapes were being committed?

A:

He told me that I will not be sent to school if I will shout and fight back, and I wanted to go to school during that time.

Q:

But you were not threatened with any weapon or physical harm during the time that you were threatened?

A:

He showed me a bolo.

Q:

But he was not holding this bolo at the time the alleged rape was committed?

A:

It was beside him, sir.

Q:

He did not even touch that bolo while the rape was being committed?

A:

No, sir.

Q:

And you could even grab that bolo if you wanted to during the alleged time of rape?

A:

I was afraid.

Q:

As far as you can remember, how many times were you raped by the accused?

A:

Many times, I can no longer remember because he treated me as his wife.

Q:

But despite the opportunity open to you for you to escape, you did not use them?

A:

I tried to escape but I did not know where to go.[33]

x x x x

Re-direct:

PUBLIC PROSECUTOR:

When you said a while ago that you did not shout or asked for help from your brother and cousin and you said you were threatened, did you believe your uncle when he threatened you?

A:

Yes, sir.

Q:

Why did you believe him?

A:

Because I was afraid.

Q:

And the threat that he made, that frightened you?

A:

His voice, "masyadong mataas." When I was still a child he used to spank me.

Q:

What was (sic) the exact words that he said that made you frightened?

A:

That I cannot go to school.

Q:

That is all?

A:

He also told me that he will kill my brother and sister.

Q:

Did you believe him when he said he will kill your brother and sister?

A:

Yes, sir, because he has a frightful face.

Q:

Did you see your uncle physically harm your brother and sister even before or after the incident?

A:

Yes, sir, he had made physical harm on my brother and sister.[34]

Hence, the trial court did not err in appreciating the testimony of AAA. The unbroken line of jurisprudence is that this Court will not disturb the findings of the trial court as to the credibility of witnesses, considering that it is in a better position to observe their candor and behavior on the witness stand. Evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court, because of its unique opportunity to observe the witnesses and their demeanor, conduct, and attitude, especially under cross-examination. Its assessment is respected unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case.[35] Furthermore, the above testimonies of AAA positively identifying appellant as the one who defiled her were all the more strengthened by the Medico-Legal Report[36] conducted by Dr. Rosaline Onggao, who also testified that:

PUBLIC PROSECUTOR: Can you tell us what is in the findings which would verify or confirm the information given to you by AAA that she was sexually abused for several times?

A:

The hymen.

Q:

Where particularly in the hymen would confirm that she was sexually abused?

A:

The healed laceration in the hymen.

Q:

Based on the healed laceration, would you be able to tell this Honorable Court the time when the sexual abuse occurred?

A:

Since the lacerations were healed more than 7 days or more prior to my examination, it could be more than a month.

Q:

What could be the cause of laceration in the hymen?

A:

The laceration could have been caused by forcible entry of a hard object.

Q:

Would you consider the penis as a hard blunt object?

A:

Yes, sir.[37]

It is settled that when the victim's claim of rape is corroborated by the physical findings of penetration, there exists sufficient basis for concluding that sexual intercourse did take place.[38]

For his defense, appellant merely denied having raped AAA. However, denial, when unsubstantiated by clear and convincing evidence, constitutes negative self-serving evidence which deserves no greater evidentiary value than the testimony of a credible witness who testified on affirmative matters.[39] In the present case, the records are devoid of any clear and convincing evidence that would substantiate appellant's denial. In the same manner, appellant's claim that the filing of the criminal charges against him was instigated by AAA's aunt because he failed to lend the latter money is uncorroborated by any evidence. Thus, when there is no evidence to show any improper motive on the part of the rape victim to testify falsely against the accused or to falsely implicate him in the commission of a crime, the logical conclusion is that the testimony is worthy of full faith and credence.[40]

With regard to the modification of the trial court's decision by the CA as to the latter's findings that only an attempted rape was committed on January 31, 1994, this Court disagrees. AAA's testimony belies the consummation, as well as the attempt to rape her on the said date. She said that:

Q:

My question is, after December 1993, what else did the accused do to you?

A:

On January 31, 1994, the accused kissed me and touched my private parts again.

Q:

Where did this happen?

A:

Inside our room in our house at St. Anthony, Inarawan, Antipolo, Rizal.

Q:

Aside from kissing you and touching your private parts in your house where you were living, what else did the accused do to you?

A:

On January 31, after I took a bath when I went inside our room wrapped in towel, I did not know that the accused was inside the room, he removed the towel and laid me down at the sofa, tried to kiss me but I kicked him and scratched his arms.

Q:

Then what happened next?

A:

Afterwards, he went out of the room, I dressed up and I was trying to get out of the house and he was preventing me from going out. He was blocking my way. He again wanted to rape me.

Q:

What happened next?

A:

I pushed him and I was able to open the door and I ran out of the house.

Q:

You are telling that in January 1994, all these things the accused did to you except inserting his penis to your vagina?

A:

Yes.[41]

x x x x

PUBLIC PROSECUTOR: In January 1994, did the accused raped (sic) you by placing his penis inside your vagina?

A:

Not exactly January 31, 1994, but I remember between January 1 to 5.

Q:

Nothing happens on January 31, 1994?

A:

I was not raped anymore on January 31, 1994, because I told my sister about it already.[42]

Attempted rape requires that the offender commence the commission of rape directly by overt acts, but does not perform all the acts of execution by reason of some cause or accident other than his own spontaneous desistance.[43] The prosecution must, therefore, establish the following elements of an attempted felony:

- The offender commences the commission of the felony directly by overt acts;
- He does not perform all the acts of execution which should produce the felony;
- The offender's act be not stopped by his own spontaneous desistance;
- The non-performance of all acts of execution was due to cause or accident other than his spontaneous desistance.[44]

The above elements are wanting in the present case. Appellant's act of removing the towel wrapped in the body of AAA, laying her on the sofa and kissing and touching her private parts does not exactly demonstrate the intent of appellant to have carnal knowledge of AAA on that particular date; thus, dismissing the mere opinion and speculation of AAA, based on her testimony, that appellant wanted to rape her. Even so, the said acts should not be left unpunished as the elements of the crime of acts of lasciviousness, as defined in the Revised Penal Code, in relation to Section 5,[45] Article III of Republic Act (R.A.) No. 7610,[46] AAA, being a minor when the incident happened, are present. In *People v. Bon*: [47]

The elements of the crime of acts lasciviousness are: (1) that the offender commits any act of lasciviousness or lewdness; (2) that it is done: (a) by using force and intimidation or (b) when the offended party is deprived of reason or otherwise unconscious, or (c) when the offended party is under 12 years of age; and (3) that the offended party is another person of either sex.

Section 32, Article XIII, of the Implementing Rules and Regulations of RA 7610 or the Child Abuse Law

defines lascivious conduct, as follows:

[T]he intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person.[48]

Clearly, all the elements of the offense are present. The actions of appellant on January 31, 1994, i.e., laying AAA on the sofa and kissing and touching her private parts are, by definition, lascivious or lewd, and based on AAA's testimony, the intimidation from appellant was in existence and apparent. Section 5 of R.A. No. 7610 does not merely cover a situation of a child being abused for profit, but also one in which a child engages in any lascivious conduct through coercion or intimidation.[49] As case law has it, intimidation need not necessarily be irresistible.[50] It is sufficient that some compulsion equivalent to intimidation annuls or subdues the free exercise of the will of the offended party.[51] This is especially true in the case of young, innocent and immature girls who could not be expected to act with equanimity of disposition and with nerves of steel.[52] Young girls cannot be expected to act like adults under the same circumstances or to have the courage and intelligence to disregard the threat.[53]

Incidentally, under Section 4, Rule 120 of the Revised Rules of Criminal Procedure, when there is a variance between the offense charged in the complaint or information, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.[54] As explained by this Court in *People v. Abulon*:^[55]

However, following the variance doctrine embodied in Section 4, in relation to Section 5, Rule 120, Rules of Criminal Procedure, appellant can be found guilty of the lesser crime of acts of lasciviousness. Said provisions read:

Sec. 4. Judgment in case of variance between allegation and proof. - When there is a variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.

Sec. 5. When an offense includes or is included in another. - An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitutes the latter. And an offense charged is necessarily included in the offense proved when the essential ingredients of the former constitute or form part of those constituting the latter.

Indeed, acts of lasciviousness or abusos dishonestos are necessarily included in rape.[56]

In *People v. Candaza*,^[57] this Court ruled that the penalty for acts of lasciviousness performed on a child under Section 5(b) of R.A. No. 7610 is reclusion temporal in its medium period to reclusion perpetua; thus, applying the Indeterminate Sentence Law, the penalty to be imposed on appellant should thus fall within the range of prision mayor medium to reclusion temporal minimum, as minimum, to reclusion temporal maximum, as maximum.

WHEREFORE, the appealed Decision dated April 14, 2005 of the Court of Appeals finding appellant Alejandro of Rellota y Tadeo guilty beyond reasonable doubt of the crime of two (2) counts rape is hereby **AFFIRMED** with the **MODIFICATION** that the same appellant is also **GUILTY** beyond reasonable doubt of the crime of acts of lasciviousness as defined in the Revised Penal Code, in relation to Section 5, Article III of Republic Act No. 7610, and is hereby sentenced to suffer an indeterminate penalty of imprisonment from eight (8) years and one (1) day of prision mayor, as minimum to seventeen (17) years, four (4) months and (1) day of reclusion temporal, as

maximum; and per previous ruling[58] of this Court, must also indemnify the victim in the amount of P15,000.00 as moral damages and pay a fine in the same amount.

SO ORDERED.

Carpio, (Chairperson), Nachura, Abad, and Mendoza, JJ., concur.

[1] *People of the Philippines v. Perez*, G.R. No. 182924, December 24, 2008, 575 SCRA 653, 671, citing *People v. Espinosa*, 432 SCRA 86, 99 (2004).

[2] Penned by Associate Justice Edgardo F. Sundiam, with Associate Justices Renato C. Dacudao and Japar B. Dimaampao, concurring; rollo, pp. 3-19.

[3] Penned by Executive Judge Mauricio M. Rivera; CA rollo, pp. 46-50.

[4] This is pursuant to the ruling of this Court in *People of the Philippines v. Cabalquinto* (G.R. No. 167693, September 19, 2006, 502 SCRA 419), wherein this Court resolved to withhold the real name of the victims-survivors and to use fictitious initials instead to represent them in its decisions. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate family or household members, shall not be disclosed. The names of such victims, and of their immediate family members other than the accused, shall appear as "AAA," "BBB," "CCC," and so on. Addresses shall appear as "XXX" as in "No. XXX Street, XXX District, City of XXX."

The Supreme Court took note of the legal mandate on the utmost confidentiality of proceedings involving violence against women and children set forth in Sec. 29 of Republic Act No. 7610, otherwise known as Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act; Sec. 44 of Republic Act No. 9262, otherwise known as Anti-Violence Against Women and Their Children Act of 2004; and Sec. 40 of A.M. No. 04-10-11-SC, known as Rule on Violence Against Women and Their Children effective November 15, 2004.

[5] Branches 71, 73 and 74.

[6] Records, pp. 1-10.

[7] *Id.* at 20.

[8] *Id.* at 53.

[9] *Id.* at 49-50.

[10] *Id.* at 70.

[11] *Id.* at 262-266.

[12] *Id.* at 268.

[13] CA rollo, pp. 27-28.

[14] *Id.* at 85.

[15] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[16] Rollo, pp. 3-19.

[17] CA rollo, pp. 34-45.

[18] Id. at 55-75.

[19] *People v. Espino, Jr.*, G.R. No. 176742, June 17, 2008, 554 SCRA 682, 695-696, citing *People v. Malones*, 469 Phil. 301, 318 (2004).

[20] Id., citing *People v. Lou*, 464 Phil. 413, 421 (2004).

[21] *People v. Pangilinan*, G.R. No. 171020, May 14, 2007, citing *People v. Layugan*, 428 SCRA 98, 114 (2004).

[22] Id., citing *People v. Manahan*, 455 Phil. 658, 672-673 (2003).

[23] Id., citing *People v. Tonyacao*, 433 SCRA 513, 530 (2004).

[24] TSN, September 22, 1994, pp. 5-7.

[25] Id. at 10-11.

[26] Id. at 12-13.

[27] CA rollo, pp. 9-10.

[28] *People v. Buban*, G.R. No. 166895, January 24, 2007 citing *People v. Nava, Jr.*, 333 SCRA 749, 760 (2000).

[29] 443 Phil. 782 (2003).

[30] Id. at 800-801, citing *People v. Abalde*, 329 SCRA 418 (2000); Francisco, *The Revised Rules of Court of the Philippines*, 1991 ed., Volume VII, Part II, p. 542; *People v. Rosario*, 246 SCRA 658 (1995); *People v. Cula*, 329 SCRA 101 (2000); *People v. Tamala*, 284 SCRA 436 (1998); *People v. Perez*, 270 SCRA 181 (1997); *People v. Arafles*, 325 SCRA 181 (2000).

[31] TSN, December 26, 1994, pp. 2-3.

[32] Id. at 6.

[33] TSN December 18, 1997, pp. 7-9.

[34] Id. at 12-13.

[35] *People v. Tormis*, G.R. 183456, December 18, 2008, citing *People v. Dizon*, 453 Phil. 858, 881 (2003).

[36] Which shows the following findings:

FINDINGS:

GENERAL AND EXTRAGENITAL:

x x x x

GENITAL:

There is a scanty growth of pubic hair. Labia majora are full, convex and coaptated with the pinkish brown labia minora presenting in between. On separating, the same is disclosed a plastic, fleshy-type hymen with deep healed laceration at 9 o'clock and shallow healed lacerations at 3 and 7 o'clock. External vaginal orifice offers moderate resistance to the introduction of the examining index finger and the virgin-sized vaginal speculum. Vaginal canal is narrow with prominent rugosities. Cervix is normal in size, color and consistency.

CONCLUSION:

Subject is in non-virgin state physically.

There are no external signs of recent application of any form of violence. (Records, p. 272.)

[37] TSN, July 10, 1996, pp. 8-9.

[38] *People v. Rabago*, 448 Phil. 539, 550 (2003), citing *People v. Mendoza*, 440 Phil. 755 (2002).

[39] *People v. Rivera*, 414 Phil. 430, 457 (2001), citing *People v. Quilatan*, 395 Phil. 444 (2000).

[40] *People v. Pangilinan*, G.R. No. 171020, March 14, 2007, 518 SCRA 358, 389, citing *People v. Malabago*, 271 SCRA 464 (1997) and *People v. Gagto*, 253 SCRA 455 (1996).

[41] TSN, December 26, 1994, pp. 4-5.

[42] *Id.* at 11.

[43] *People v. Mingming*, G.R. No. 174195, December 10, 2008, 573 SCRA 509, 534, citing *People v. Abanilla*, 413 SCRA 654, 666 (2003).

[44] *Id.*, citing *People v. Contreras*, 338 SCRA 622, 644 (2000).

[45] Section 5. Child Prostitution and Other Sexual Abuse. - Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of reclusion temporal in its medium period to reclusion perpetua shall be imposed upon the following:

(a) Those who engage in or promote, facilitate or induce child prostitution which include, but are not limited to, the following:

- (1) Acting as a procurer of a child prostitute;
- (2) Inducing a person to be a client of a child prostitute by means of written or oral advertisements or other similar means;
- (3) Taking advantage of influence or relationship to procure a child as prostitute;
- (4) Threatening or using violence towards a child to engage him as a prostitute; or
- (5) Giving monetary consideration goods or other pecuniary benefit to a child with the intent to engage such child in prostitution.

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse; Provided, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period; and

(c) Those who derive profit or advantage therefrom, whether as manager or owner of the establishment where the prostitution takes place, or of the sauna, disco, bar, resort, place of entertainment or establishment serving as a cover or which engages in prostitution in addition to the activity for which the license has been issued to said establishment.

[46] Approved on June 17, 1992.

[47] 444 Phil 571 (2003).

[48] Id. at 583-584.

[49] Amployo v. People, G.R. No. 157718, April 26, 2005, 457 SCRA 282, 295, citing People v. Larin, 297 SCRA 309, 325-326 (1998).

[50] Id. at 292, citing People v. Victor, 393 SCRA 472, 485 (2002).

[51] Id. at 296, citing People v. Victor, citing Padilla, Criminal Law, Revised Penal Code, Vol. 4, p. 610 (1990 ed.).

[52] Id., citing People v. Adora, 275 SCRA 441, 468 (1997).

[53] Id.

[54] Dado v. People, 440 Phil. 520, 539 (2002).

[55] G.R. No. 174473, August 17, 2007, 530 SCRA 675.

[56] Id. at 703-704, citing People v. Laguerta, 398 Phil. 370, 380 (2000), citing Dulla v. Court of Appeals, 326 SCRA 32 (2000). (Emphasis supplied.) See also Amployo v. People, supra note 49.

[57] G.R. No. 170474, June 16, 2006, 491 SCRA 280.

[58] People v. Candaza, supra, at 299, citing Olivarez v. Court of Appeals, 465 SCRA 465, 473-476. (2005).

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.